

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

CENTRAL STATES, SOUTHEAST AND )  
SOUTHWEST AREAS PENSION FUND; and )  
ARTHUR H. BUNTE, JR., as Trustee, )  
Plaintiffs, ) Case No: 16-cv-2746  
v. )  
Plaintiffs, ) Judge:  
SIDNEY INSULATION, INC, a Missouri )  
corporation, ) Magistrate Judge:  
Defendant. )

**COMPLAINT**

Plaintiffs, Central States, Southeast and Southwest Areas Pension Fund and Arthur H. Bunte, Jr., one of its present trustees, for a cause of action against Defendants allege as follows:

**INTRODUCTION AND PARTIES**

1. This is an action under the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (“MPPAA”), 29 U.S.C. § 1001, *et seq.*, for collection of withdrawal liability incurred by an employer as a result of a withdrawal from a multiemployer pension plan.

2. Plaintiff Central States, Southeast and Southwest Areas Pension Fund (the “Pension Fund”) is a multiemployer pension plan within the meaning of 29 U.S.C. §§ 1002(37) and 1301(a)(3).

3. Plaintiff Arthur H. Bunte, Jr. is a present trustee and fiduciary of the Pension Fund within the meaning of section 3(21) (A) of ERISA, 29 U.S.C. § 1002(21)(A), and he and his fellow trustees are the plan sponsor of the Pension Fund within the meaning of section

4001(a)(10) of ERISA, 29 U.S.C. § 1301(a)(10). The Trustees administer the Pension Fund at 9377 West Higgins Road, Rosemont, Illinois.

4. Defendant Sidney Insulation, Inc. (“Sidney Insulation”) is a corporation organized under the laws of the State of Missouri.

#### **JURISDICTION AND VENUE**

5. This is an action for collection of withdrawal liability, interest, and penalties incurred by an employer as a result of a withdrawal from a multiemployer pension plan.

6. This action arises under the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (“MPPAA”), 29 U.S.C. § 1001 *et seq.* This Court has jurisdiction over this action under sections 502(e), 502(f), and 4301(c) of ERISA, 29 U.S.C. §§ 1132(e), 1132(f) and 1451(c).

7. Venue lies in this Court under sections 502(e)(2) and 4301(d) of ERISA, 29 U.S.C. §§ 1132(e)(2) and 1451(d), in that Pension Fund is administered at its principal place of business in Rosemont, Illinois. Venue is also proper in this Court pursuant to the forum selection clause contained in the Pension Fund’s Trust Agreement which designates this district as the appropriate forum for lawsuits to collect withdrawal liability.

#### **BACKGROUND**

8. This matter arises from the withdrawal of Flexo Supply Company, Inc., d/b/a/ the Stovey Company Division (“Stovey”) from the Pension Fund and the collection of Stovey’s resulting withdrawal liability in the amount of \$639,495.41 (the “Withdrawal Liability”), as determined under section 4201(b) of ERISA, 29 U.S.C. § 1381(b).

9. On April 30, 2013, the United States District Court for the Northern District of Illinois entered a judgment in favor of the Pension Fund and against Stovey in the amount of

\$787,967.48 for the Withdrawal Liability in an action styled *Central States, Southeast & Southwest Areas Pension Fund v. Flexo Supply Company, a Missouri Corporation d/b/a The Stovey Company Division*, No. 13 C 1593 (N.D. Ill.) (Kennelly, J.) (the “Judgment”).

10. To date, Stovey has not made any payments with respect to the Judgment.

**FACTS**

11. In or around June and July of 2008, Stovey was facing financial instability and transferred most of its assets and operations to Sidney Insulation (the “Transfer”).

12. Sidney Insulation did not pay adequate consideration in exchange for the receipt of Stovey’s assets.

13. Sidney Insulation performs the same operations that used to be performed by Stovey, namely, insulation contracting.

14. Sidney Insulation operates from the same commercial property from which Stovey operated.

15. Sidney Insulation is owned 100% by Sarah Sidney, the adult daughter of Stovey’s 100% shareholder, David Sidney.

**CLAIM FOR RELIEF**

**FEDERAL COMMON LAW SUCCESSOR LIABILITY**

16. Plaintiffs allege and incorporate each and every allegation made in paragraphs 1 through 15 of this Complaint as though fully set forth herein.

17. Sidney Insulation is a successor of Stovey because it conducts the same insulation contracting business that was previously performed by Stovey.

18. Sidney Insulation uses the same assets that were used by Stovey.

19. Sidney Insulation uses the same equipment that was used by Stovey.

20. Upon information and belief, Sarah Sidney and Sidney Insulation were aware that Stovey would be facing withdrawal liability to the Pension Fund at the time that the Transfer was made.

21. As a federal common law successor of Stovey, Sidney Insulation is liable for all amounts owed by Stovey to the Pension Fund, including the Withdrawal Liability.

WHEREFORE, Plaintiffs request the following relief:

- (a) A judgment against Sidney Insulation, and on behalf of Plaintiffs, pursuant to ERISA, 29 U.S.C. 1132(g)(2) and 1451(b), for—
  - i. The past due withdrawal liability payment in the amount of \$639,495.41;
  - ii. Interest computed and charged at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by JPMorgan Chase Bank, NA (New York, New York) for the fifteenth (15<sup>th</sup>) day of the month for which interest is charged;
  - iii. An amount equal to the greater of interest on the past due withdrawal liability or liquidated damages of 20% of the past due withdrawal liability; and
  - iv. Attorneys' fees and costs.
- (b) Post-judgment interest computed and charged on the entire judgment at an annualized interest rate equal to two percent (2%) plus the prime interest rate established by JPMorgan Chase Bank, NA (New York, New York) for the fifteenth (15<sup>th</sup>) day of the month for which interest is charged, compounded annually; and
- (c) Such further or different relief as this Court may deem proper and just.

Respectfully submitted,

/s/ Emily E. Gleason

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